

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

BYRON TERRELL SMITH, SR.

Plaintiff,

v.

JOE ROSS,

Defendant.

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No. 1:20-CV-61 SRC

MEMORANDUM AND ORDER

This matter is before the Court upon review of plaintiff's pro se complaint. Because plaintiff has failed to include a statement of claim in his complaint, the Court will order plaintiff to amend his complaint on a Court form within thirty (30) days of the date of this Memorandum and Order. Additionally, plaintiff will be required to provide the Court with a copy of his prison account statement.

Background

Plaintiff, an inmate at Mississippi County Detention Center, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights. The sole individual named as a defendant in this action is Jail Administrator, Joe Ross. Plaintiff has not alleged the capacity under which he is suing defendant Ross.

Although plaintiff filed his complaint on a court-provided form, his complaint lacks any statement of claim. Thus, the Court is unable to discern any allegations related to plaintiff's cause of action. Moreover, although plaintiff has filed a motion to proceed in forma pauperis, he has failed to file the accompanying prison account statement.

Discussion

Because plaintiff is proceeding pro se, the Court will allow plaintiff to file an amended complaint on the Court's form. Plaintiff has thirty (30) days from the date of this Order to file an amended complaint in accordance with the specific instructions set forth here. All claims in the action must be included in one, centralized complaint form. *See* Fed. R. Civ. P. 7(a)(1), 8(a).

Plaintiff is advised that the amended complaint will replace the original complaint in all aspects. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Plaintiff must submit the amended complaint on a court-provided form, and he must comply with the Federal Rules of Civil Procedure, including Rules 8 and 10. Rule 8 requires plaintiff to set forth a short and plain statement of the claim showing entitlement to relief, and it also requires that each averment be simple, concise and direct. Rule 10 requires plaintiff to state his claims in separately numbered paragraphs, each limited as far as practicable to a single set of circumstances. Plaintiff must type, or very neatly print, the amended complaint.

In the "Caption" section of the amended complaint, plaintiff must state the first and last name, to the extent he knows it, of the defendant or defendants he wants to sue. Plaintiff should also indicate whether he intends to sue the defendant in his or her individual capacity, official capacity, or both.¹ Plaintiff should avoid naming anyone as a defendant unless that person is directly related to his claim.

In the "Statement of Claim" section, plaintiff should begin by writing the defendant's name. In separate, numbered paragraphs under that name, plaintiff should write the specific facts supporting his claim or claims against the defendant. If plaintiff is suing more than one defendant, he should proceed in the same manner with each one, separately writing each individual

¹ The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

defendant's name and, under that name, in numbered paragraphs, the factual allegations supporting his claim or claims against that defendant. Plaintiff should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See* Fed. R. Civ. P. 20(a)(2). Alternatively, plaintiff may choose a single defendant, and set forth as many claims as he has against him or her. *See* Fed. R. Civ. P. 18(a). Plaintiff's failure to make specific factual allegations against any defendant will result in that defendant's dismissal.

Additionally, plaintiff must file his prison account statement within thirty (30) days of the date of this Memorandum and Order.

If plaintiff fails to file an amended complaint, and/or his prison account statement, within thirty (30) days and in compliance with the Court's instructions, the Court will dismiss this action without prejudice and without further notice.

Accordingly,

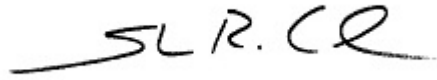
IT IS HEREBY ORDERED that the Clerk is directed to mail to plaintiff a copy of the Court's prisoner civil rights complaint form.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint on the Court's form within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that plaintiff must file a certified copy of his prison account statement for the six-month period preceding the filing of the complaint within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court will dismiss this action without prejudice. If the case is dismissed for non-compliance with this Order, the dismissal will **not** count as a “strike” under 28 U.S.C. § 1915(g).

Dated this 27th day of March, 2020.

A handwritten signature in black ink, appearing to read "SLR. CLARK", written in a cursive style.

STEPHEN R. CLARK
UNITED STATES DISTRICT JUDGE